

Co-operatives Act 1996

Rule changing procedures

Introduction

The Co-operatives Act contains detailed provisions that co-operatives will have to follow to bring their rules into line with the new Act's requirements. Some rule amendments are more complex than others.

In this information sheet we will first look at how co-operatives should go about amending their rules. We will then look at the specialised procedure applicable to a co-operative which wants to incorporate an active membership rule (see Information Sheet 1) or change to an active membership rule.

RULE CHANGES GENERALLY - STEPS (PART 5 of the Act)

1. Decision to Change the Rules

The Board or the membership decide to change the rules.

2. Seek Prior Approval of Registrar

A draft of the proposed change(s) must be provided to the Registrar of Co-operatives at least 28 days (or less if the Registrar allows) before:

- A. the notice to members being sent (21 days prior to the meeting) with a statement of the reason(s) for the change(s); and
- B. the resolution being passed by the Board.

3. Approval by Registrar

An officer of the Registrar may check that the lodged rules do not contravene the Act.

The officer may approve the rules or require amendments. Ultimately, he or she must approve or refuse to accept the rules, or will be deemed to have approved them due to the passing of time.

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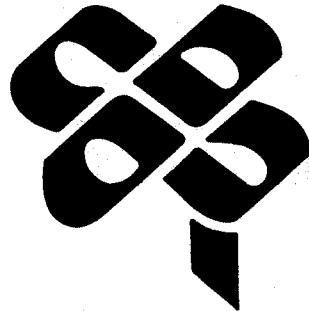
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The Federation strongly recommends that each co-operative obtains its own professional advice to ensure that the specific circumstance of the co-operative are taken into account.



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If the amendment is to include, or make changes such that an existing rule complies with, a model or optional model rule, approval will be faster. There is no requirement to adopt any of the model rules. However, it is more likely that problems or delays will occur in the approval process if rules individual to the Co-operative are adopted.

4. Appeals of Registrar's Decision - re: Rules

The affected co-operative can, by written notice, appeal to the Administrative Appeals Tribunal ("AAT"). You should note here that an individual member of a co-operative does not have standing to appeal.

5. Voting on the Change

Changes can be made by a:

A. Resolution of the Board

Rather than the membership, if the change is to bring the Rules into accord with a requirement of the Act. What if the Act changes down the track? Again, the Board can effect the alteration if the change is made to ensure compliance. Where this occurs, the Board must notify its members as soon as practicable, or at the next Annual General Meeting;

B. Meeting of Members

1. A special resolution of the members of the co-operative; or
2. Such greater requirement as is imposed by the rules may amend the rules. For example, the rules may require an extended notice period of say, 28 days instead of 21.

6. Registration

Any alteration to the rules does not take effect until registered. It must be lodged with the Registrar in the approved format with a consolidated copy of the Rules (which includes the change) within 28 days of the meeting or Board resolution.

Appeals of Registrar's Decision - re: Registration

If the Registrar refuses to register the amended rules, an affected co-operative can appeal to the AAT as mentioned in item 4 above.

SPECIAL PROCEDURES -

CHANGES TO ACTIVE MEMBERSHIP RULES (Part 6, Division 2)

In Information Sheet 1, we noted the importance of having an active membership provision in the Rules. There may also subsequently arise a need to alter that provision. But how?

This will also apply to existing co-operatives which need to include an active membership rule for the first time.

- I. A meeting of the Board of the co-operative must first decide to amend its rules. The directors able to vote in relation to this decision are only those who would be included as active members under the amended definition.

However, if less than 2 directors (whether present or not) would be eligible to vote on this basis then all directors may vote. The right to vote in this instance has no effect on other rights a director has as a member of the co-operative.

- II. A notice of meeting must be sent out to members 21 days before the intended meeting. The notice must set out:

- (1) the full text of the intended resolution;
- (2) whether the member recipient is able to vote on the resolution; and
- (3) a copy of section 131 of the Act (which relates to cancellation of membership of an inactive member).

- III. A member who is informed that he/she is not able to vote may apply to the Registrar of Co-operatives for a determination. This is only relevant to the first meeting to include new provisions in relation to active membership. In relation to this first meeting, it is also only members who would be able to vote as active members after the provisions have been included who can vote.

Working Example

Grain Growers Co-operative (“GGC”) needs to include active membership provisions in its rules. The directors decide that its primary activities are growing X tonnes of corn a year and using assets GGC owns to harvest that corn. Another primary activity is the sale of X tonnes to Y each year.

Fred, a director, cannot vote because he uses his own machines to harvest and sold his corn to Z last year. The Board votes in favour and the notice of meeting is sent out.

The members, who are eligible to, vote in favour. As a result, the members who do not use the services of GGC and cannot be classified as “active members” have their memberships cancelled. □